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11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 ADRIAN HOLLEY, et al., 14 <i>Plaintiffs,</i> 15 vs. 16 GILEAD SCIENCES, INC., 17 <i>Defendant.</i>	Case No. 4:18-cv-06972-JST JOINT STIPULATION AND [PROPOSED] ORDER REGARDING DISMISSAL OF CLAIMS AND RESPONSIVE PLEADINGS
18 BRIAN BOYNTON, et al., 19 <i>Plaintiffs,</i> 20 vs. 21 GILEAD SCIENCES, INC., 22 <i>Defendant.</i>	Case No. 4:22-cv-00686-JST JOINT STIPULATION AND [PROPOSED] ORDER REGARDING DISMISSAL OF CLAIMS AND RESPONSIVE PLEADINGS
23 AARON K. SEALE, et al., 24 <i>Plaintiffs,</i> 25 vs. 26 GILEAD SCIENCES, INC., 27 <i>Defendant.</i>	Case No. 4:22-cv-01032-JST JOINT STIPULATION AND [PROPOSED] ORDER REGARDING DISMISSAL OF CLAIMS AND RESPONSIVE PLEADINGS

1 CARL ANTHONY FRINK, et al.,

2 *Plaintiffs,*

3 vs.

4 GILEAD SCIENCES, INC.,

5 *Defendant.*

Case No. 4:22-cv-01232-JST

**JOINT STIPULATION AND [PROPOSED]
ORDER REGARDING DISMISSAL OF
CLAIMS AND RESPONSIVE PLEADINGS**

JOINT STIPULATION

Pursuant to Northern District of California Civil Local Rule 7-12, Plaintiffs in the above-captioned actions and Defendant Gilead Sciences, Inc. (“Gilead”) (collectively, the “Parties”), by and through their respective undersigned counsel of record, submit the following Stipulation and Proposed Order:

WHEREAS, on February 27, 2019, Gilead filed its motion to dismiss in the actions entitled *Holley et al. v. Gilead Sciences, Inc.*, No. 4:18-cv-06972-JST (“*Holley*”), and *Dowdy et al. v. Gilead Sciences, Inc.*, No. 4:19-cv-00481-JST (“*Dowdy*”) (ECF No. 45);

WHEREAS, on May 10, 2019, the Court granted in part and denied in part Gilead’s motion to dismiss in *Holley* and *Dowdy* (ECF No. 75) (“May 10 Order”);

WHEREAS, the Court's May 10 Order stated that: "Plaintiffs' opposition makes clear that they are not pursuing claims that Gilead should have pursued a different drug composition after approval." (ECF No. 75 at 13 n.6);

WHEREAS, on May 10, 2019, 127 additional plaintiffs filed suit against Gilead in the action entitled *Lyons et al. v. Gilead Sciences, Inc.*, No. 4:19-cv-02538-JST (“*Lyons*”);

WHEREAS, on May 31, 2019, Plaintiffs filed a First Amended Consolidated Complaint for Damages (ECF No. 84) (“FAC”), including the claims of all plaintiffs from the *Holley*, *Dowdy*, and *Lyons* actions, under *Holley* as the lead case;

WHEREAS, on July 10, 2019, Gilead filed a motion to dismiss Plaintiffs' FAC for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) (ECF No. 91), and a motion to dismiss Plaintiffs' FAC under Federal Rules of Civil Procedure 8(a), 9(b), and 12(b)(6) (ECF No. 92);

WHEREAS, on October 16, 2019, the Court granted in part and denied in part Gilead's motions to dismiss Plaintiffs' FAC (ECF No. 123) ("October 16 Order");

WHEREAS, the Court's October 16 Order: (1) severed and dismissed the claims of 16 California plaintiffs in order to perfect diversity jurisdiction; (2) dismissed "without leave to amend, but without prejudice to any future motion to amend on a showing of good cause," plaintiffs' fraud and consumer protection claims "to the extent they rely on allegations of affirmative

1 misrepresentations rather than omissions"; and (3) dismissed without leave to amend, but without
 2 prejudice to any future motion to amend on a showing of good cause, "[p]laintiffs' post-approval,
 3 post-July 2012 failure-to-warn claims." (ECF No. 123 at 12);

4 WHEREAS, Gilead answered the *Holley* FAC on December 13, 2019 (ECF No. 142);

5 WHEREAS, on January 13, 2022, 15 additional plaintiffs filed suit against Gilead in the
 6 action entitled *Boynton et al. v. Gilead Sciences, Inc.* ("Boynton");

7 WHEREAS, on January 31, 2022, the *Boynton* action was transferred to this District from the
 8 District of South Carolina, *see Boynton et al. v. Gilead Sciences, Inc.*, No. 4:22-cv-00686-JST;

9 WHEREAS, on January 13, 2022, 84 additional plaintiffs filed suit against Gilead in the
 10 action entitled *Seale et al. v. Gilead Sciences, Inc.* ("Seale");

11 WHEREAS, on February 1, 2022, the *Seale* action was transferred to this District from the
 12 Southern District of New York, *see Seale et al. v. Gilead Sciences, Inc.*, No. 4:22-cv-01032-JST;

13 WHEREAS, on January 14, 2022, 27 additional plaintiffs filed suit against Gilead in the
 14 action entitled *Frink et al. v. Gilead Sciences, Inc.* ("Frink");

15 WHEREAS, on February 25, 2022, the *Frink* action was transferred to this District from the
 16 District of Maryland, *see Frink et al. v. Gilead Sciences, Inc.*, No. 4:22-cv-01232-JST;

17 WHEREAS, on March 1, 2022, the Court found that the *Boynton*, *Seale*, and *Frink* actions
 18 are related to the *Holley* action (ECF No. 899);

19 WHEREAS, on March 7, 2022, the Court consolidated the *Boynton*, *Seale*, and *Frink* actions
 20 with the *Holley* action for pretrial purposes (ECF No. 902);

21 WHEREAS, the Parties agree that, for purposes of appeal, or for any other purposes, the
 22 briefs and supporting papers, together with the oral argument, regarding Gilead's above-described
 23 motions to dismiss and the Court's orders on those motions shall be treated as having been filed and
 24 entered in the *Boynton*, *Seale*, and *Frink* actions;

25 WHEREAS, the *Boynton*, *Seale*, and *Frink* plaintiffs agree they are not asserting claims that
 26 Gilead should have changed the design of its FDA-approved TDF medications after the FDA
 27 approved the TDF medications;

28 WHEREAS, by stipulating to the foregoing, the *Boynton*, *Seale*, and *Frink* plaintiffs do not

1 intend to limit, in any way, their claims that Gilead should have changed the design of its TDF
2 medications before FDA approval;

3 WHEREAS, the *Boynton, Seale, and Frink* Plaintiffs agree, without prejudice to any future
4 motion to amend on a showing of good cause, to the dismissal of their (1) fraud and consumer
5 protection claims to the extent they rely on allegations of affirmative misrepresentations and (2)
6 post-approval, post-July 2012 failure-to-warn claims (ECF No. 123 at 12) if any;

7 WHEREAS, by stipulating to the foregoing, the Parties do not intend to waive any right to
8 discovery or to appeal from the decisions of the Court discussed herein;

9 WHEREAS, the Parties wish to avoid further unnecessary motion practice on the pleadings
10 at this time, and to avoid the burdens of requiring similar answers to successive complaints; and

11 WHEREAS, the Parties request that the Court issue an Order staying Gilead's deadline to
12 respond to the *Boynton, Seale, and Frink* Complaints, and requiring agreement of the parties or leave
13 of Court for the filing of a motion to dismiss the *Boynton, Seale, and Frink* Complaints.

14 THEREFORE, IT IS HEREBY STIPULATED, by and between the Parties, through their
15 respective undersigned counsel of record, and pursuant to Civil Local Rule 7-12, that:

- 16 1. The briefs and supporting papers, together with the oral argument, regarding Gilead's
17 motions to dismiss in the *Holley, Dowdy, and Lyons* actions and the Court's orders on
18 those motions shall be treated as having been filed and entered in the *Boynton, Seale,*
19 and *Frink* actions.
- 20 2. Plaintiffs in the *Boynton, Seale, and Frink* actions are not asserting claims that Gilead
21 should have changed the design of its FDA-approved TDF medications after the FDA
22 approved the TDF medications.
- 23 3. Any fraud and consumer protection claims that rely on allegations of affirmative
24 misrepresentations, rather than omissions, are dismissed from the *Boynton, Seale, and*
25 *Frink* actions without leave to amend, but without prejudice to any future motion to
26 amend on a showing of good cause.
- 27 4. Any post-approval, post-July 2012 failure-to-warn claims are dismissed from the
28 *Boynton, Seale, and Frink* actions without leave to amend, but without prejudice to

any future motion to amend on a showing of good cause.

5. Gilead's deadline to respond to the *Boynton, Seale, and Frink* Complaints is hereby
2 stayed pending further order of the Court.
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4. Except if plaintiffs in the *Boynton, Seale, and Frink* actions file an amended
5 complaint, Gilead shall not file a motion to dismiss any claim or complaint in the
6 *Boynton, Seale, and Frink* actions without first obtaining either the agreement thereto
7 of the plaintiff(s) in that case or leave of court.

8. Nothing herein is intended to or constitutes a waiver of any Party's discovery or
9 appellate rights.

10 **STIPULATED AND AGREED TO BY:**

11 Dated: March 9, 2022

HAGENS BERMAN SOBOL SHAPIRO LLP

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1 Dated: March 9, 2022

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 9th day of March, 2022 I electronically filed the foregoing with
3 the Court using the CM/ECF system, and thereby delivered the foregoing by electronic means to all
4 counsel of record.

5 _____
6 */s/ Joshua E. Anderson*
7 Joshua E. Anderson
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1 **ATTESTATION PURSUANT TO CIVIL L.R. 5-1(i)(3)**

2 I am the ECF User whose identification and password are being used to file the foregoing
3 Stipulation and [Proposed] Order Regarding Dismissal of Claims. Pursuant to Civil Local Rule 5-
4 1(i)(3), I hereby attest that the other signatories have concurred in this filing.

5 /s/ Joshua E. Anderson
6 Joshua E. Anderson

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[PROPOSED] ORDER

Pursuant to the foregoing stipulation of the parties and good cause appearing, it is hereby
ORDERED as follows:

1. The above stipulation is GRANTED.
 2. The briefs and supporting papers, together with the oral argument, regarding Gilead's motions to dismiss in the *Holley*, *Dowdy*, and *Lyons* actions and the Court's orders on those motions shall be treated as having been filed and entered in the *Boynton*, *Seale*, and *Frink* actions.
 3. Plaintiffs in the *Boynton*, *Seale*, and *Frink* actions are not asserting claims that Gilead should have changed the design of its FDA-approved TDF medications after the FDA approved the TDF medications.
 4. Any fraud and consumer protection claims that rely on allegations of affirmative misrepresentations, rather than omissions, are dismissed from the *Boynton*, *Seale*, and *Frink* actions without leave to amend, but without prejudice to any future motion to amend on a showing of good cause.
 5. Any post-approval, post-July 2012 failure-to-warn claims are dismissed from the *Boynton*, *Seale*, and *Frink* actions without leave to amend, but without prejudice to any future motion to amend on a showing of good cause.
 6. Gilead's deadline to respond to the *Boynton*, *Seale*, and *Frink* Complaints is hereby stayed pending further order of the Court.
 7. Except if plaintiffs in the *Boynton*, *Seale*, and *Frink* actions file an amended complaint, Gilead shall not file a motion to dismiss any claim or complaint in the *Boynton*, *Seale*, and *Frink* actions without first obtaining either the agreement thereto of the plaintiff(s) in that case or leave of court.
 8. Nothing herein is intended to or constitutes a waiver of any Party's discovery or appellate rights.

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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3 Dated: _____, 2022 _____
4 Honorable Jon S. Tigar
United States District Judge
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